CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF MEETING, Public Session

September 12, 2006

Call to order: Chairman Liane Randolph called the monthly meeting of the Fair Political Practices Commission (Commission) to order at 10:05 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Randolph, Commissioners Sheridan Downey, Gene Huguenin, and Ray Remy were present. Commissioner Phil Blair was absent.

Item #1. Public Comment.

There was none.

Consent Items #3-7, 9-13.

Chairman Randolph pulled Item #2 and Item #8 from the consent calendar.

Commissioner Remy moved to approve the following items in unison:

Item #3. In the Matter of Norman Eckenrode, FPPC No. 04/258 (2 counts).

Item #4. In the Matter of New Democrat Network and Simon Rosenberg, FPPC No. 05/665 (2 counts).

Item #5. In the Matter of Voters for Honesty and Integrity in Politics and Ricardo A. Torres II, FPPC No. 06/342 (1 count).

Item #6. In the Matter of Ollie M. McCaulley, Friends to Elect Ollie McCaulley, and Mark S. Pierce, FPPC No. 04/488 (2 counts).

Item #7. In the Matter of George Runner, Friends of George Runner, and Rita Burleson, FPPC No. 05/775 (1 count).

Item #9. In the Matter of David Gold, FPPC No. 06/259 (2 counts).

Item #10. In the Matter of Race Investments, LLC, Robin P. Arkley II, Cherie P. Arkley, and Security National Servicing Corporation, a major donor committee, FPPC 06/024 (11 counts).

Item #11. In the Matter of State Farm Insurance Companies, FPPC No. 06/398 (1 count).

Item #12. Failure to Timely File Major Donor Campaign Statements.

a. **In the Matter of Kirschenman Enterprises, Inc., FPPC No. 06/174** (1 count).

b. **In the Matter of Meehleis Modular Buildings, Inc., FPPC No. 06/175** (1 count).

c. **In the Matter of Steven F. Chapman, FPPC No. 06/285** (1 count).

d. **In the Matter of Charter Communications, FPPC No. 06/286** (2 counts).

e. **In the Matter of Epsten Grinnell & Howell, APC, FPPC No. 06/289** (1 count).

f. **In the Matter of Ted Jones Ford, Inc., dba Ken Grody Ford, FPPC No. 06/300** (2 counts).

g. **In the Matter of M & N Foods, LLC, FPPC No. 06/302** (1 count).

h. **In the Matter of Prakash Jay M.D., Inc., FPPC No. 06/305** (1 count).

i. **In the Matter of Skilled Healthcare, LLC, FPPC No. 06/309** (3 counts).

j. **In the Matter of Valley Harvesting & Packing, Inc. & Affiliated Entities Including Fresh Harvest, Inc., FPPC No. 06/347** (1 count).

k. **In the Matter of Microsoft Corporation, FPPC No. 06/364** (1 count).

l. **In the Matter of TC Construction Company, Inc., FPPC No. 06/367** (1 count).

m. **In the Matter of Lehr Brothers, Inc., FPPC No. 06/368** (1 count).

n. **In the Matter of Winning Directions, FPPC No. 06/369** (1 count).

o. **In the Matter of Z-A Management, FPPC No. 06/417** (1 count).

p. **In the Matter of Bernard Karcher Investments, Inc., FPPC No. 06/423** (1 count).

q. **In the Matter of BRE Properties, Inc., FPPC No. 06/424** (3 counts.).

r. **In the Matter of Brehm Communities, FPPC No. 06/425** (2 counts).

s. **In the Matter of Care Ambulance Service, Inc., FPPC No. 06/426** (3 counts).

t. **In the Matter of Checkers Drive-In Restaurants, Inc., FPPC No. 06/427** (1 count).

u. **In the Matter of CLK, Inc., FPPC No. 06/428** (1 count).

v. **In the Matter of W. James Edwards III, FPPC No. 06/429** (2 counts).

w. **In the Matter of Emergency Groups' Office, FPPC No. 06/430** (2 counts).

x. **In the Matter of Emergency Physicians Medical Group, FPPC No. 06/431** (1 count).

y. **In the Matter of Ronald J. Grueskin, FPPC No. 06/432** (1 count).

z. **In the Matter of HG Pizza Restaurants, Inc., FPPC No. 06/433** (1 count).

aa. **In the Matter of Huntington Memorial Hospital, FPPC No. 06/434** (1 count).

bb. **In the Matter of ITU Ventures LLC, FPPC No. 06/435** (2 counts).

cc. **In the Matter of John L. Ginger Masonry, Inc., FPPC No. 06/436** (2 counts).

dd. **In the Matter of Landry Restaurant LP Development Account, FPPC No** (1 count).

ee. **In the Matter of Chris & Jennifer Lewis, FPPC No. 06/438** (1 count).

ff. **In the Matter of Lisa L. Maki, FPPC No. 06/439** (3 counts).

gg. **In the Matter of Mariner Health Care Management Company, FPPC No. 06/440** (1 count).

hh. **In the Matter of Mariner Post-Acute Network, Santa Monica, CA, FPPC No. 06/441** (1 count).

ii. **In the Matter of Michael Marston, FPPC No. 06/442** (3 counts).

jj. **In the Matter of Medical Staff of Hoag Memorial Hospital Presbyterian, FPPC No. 06/443** (1 count).

kk. **In the Matter of Michael R. Lombardi & Affiliated Entities, FPPC No. 06/444** (1 count).

ll. **In the Matter of Midland Pacific Building Corporation, FPPC No. 06/445** (1 count).

mm. **In the Matter of Pacifica Del Mar LP, FPPC No. 06/446** (1 count).

nn. **In the Matter of PJHM Architects Southwest, Inc., FPPC No. 06/447** (1 count).

oo. **In the Matter of Plum Healthcare Group, LLC, FPPC No. 06/448** (2 counts).

pp. **In the Matter of RCC, Inc., FPPC No. 06/449** (1 count).

qq. **In the Matter of The Brigantine, Inc., FPPC No. 06/450** (1 count).

rr. **In the Matter of Tim Razzari Motors, Inc., Razzari Nissan, Inc., Razzari Dodge, Inc., Razzari Visalia, Inc., FPPC No. 06/451** (1 count).

ss. **In the Matter of Roman Silberfeld/Robins, Kaplan, Miller & Ciresi, FPPC No. 06/452** (1 count).

tt. **In the Matter of Sobrato Development Companies, FPPC No. 06/453** (4 counts).

uu. **In the Matter of Adelphia Communications Corp., FPPC No. 06/522** (4 counts).

vv. **In the Matter of Bakersfield Emergency Medical Corporation, FPPC No. 06/523** (1 count).

ww. **In the Matter of Danmer, Inc., FPPC No. 06/524** (1 count).

xx. **In the Matter of Behzad Emad, FPPC No. 06/525** (1 count).

yy. **In the Matter of Emergency Medicine Management Services of California, Inc., FPPC No. 06/526** (4 counts).

zz. **In the Matter of Yury Furman, FPPC No. 06/527** (1 count).

aaa. **In the Matter of Guinn Construction, FPPC No. 06/528** (2 counts).

bbb. **In the Matter of Hard Work Too, Inc., FPPC No. 06/529** (1 count).

ccc. **In the Matter of Kaplan Fox & Kilsheimer LLP, FPPC No. 06/530** (2 counts).

ddd. **In the Matter of Mercy San Juan Medical Center Medical Staff, FPPC No. 06/531** (1 count).

eee. **In the Matter of O'Charley's, Inc., FPPC No. 06/532** (1 count).

fff. **In the Matter of Leonard Riggio, FPPC No. 06/533** (2 counts).

ggg. **In the Matter of Karolina Sandoval, FPPC No. 06/534** (1 count).

hhh. **In the Matter of Southern California Food Services Corp/Coastline Food Services Corp., Affiliated Entities, FPPC No. 06/535** (1 count).

iii. In the Matter of Superior Nissan of: Carson, Mission Hills, Puente Hills & Rancho Santa Margarita, FPPC No. 06/536 (1 count).

jjj. In the Matter of Orange Coast Title Company, FPPC No. 06/555 (2 counts).

kkk. In the Matter of Marie Callender Pie Shops, Inc., FPPC No. 06/557 (1 count).

lll. In the Matter of Judith H. Koch, FPPC No. 06/586 (3 counts).

mmm. In the Matter of John G. Sinadinos, FPPC No. 06/599 (1 count).

Item #13. Failure to Timely File Late Contribution Reports – Proactive Program.

a. In the Matter of Judith H. Koch, FPPC No. 06/587 (1 count).

Commissioner Huguenin seconded the motion. Commissioners Downey, Huguenin, Remy, and Chairman Randolph supported the motion, which carried with a 4-0 vote.

ITEMS PULLED FROM CONSENT

Item #2. Approval of the July 12, 2006, Commission meeting minutes.

Chairman Randolph said there were a few items with incorrect vote tallies from the July meeting minutes. She asked that the minutes be corrected to reflect that all commissioners were present, so that the vote tally reads, "5-0," rather than "4-0."

Commissioner Remy moved to approve the minutes as modified.

Commissioner Huguenin seconded the motion. Commissioners Downey, Huguenin, Remy and Chairman Randolph supported the motion, which passed with a 4-0 vote.

Item #8. In the Matter of Mervyn Dymally, Friends of Dymally, and Ida E. Yarbrough; FPPC No. 02/829 (1 count).

Chairman Randolph explained that she asked to pull this item because it is the first opportunity that the Commission has had to discuss voluntary expenditure ceiling violations. This case was a potential $5,000 violation, and here, the respondent came forward and pointed out the violation. So, it seems reasonable to give the respondent a "discount," for lack of a better word.

Enforcement Division Chief William Williams agreed. He said staff views that as a mitigating factor since the respondent came forward and cooperated prior to initiation of any enforcement action.

Chairman Randolph agreed that was appropriate. On the other hand, she said the respondent did not seem to be taking the limitations very seriously. There were no procedures in place for monitoring these expenditures, even though they were receiving the benefit of the designation and had agreed to the voluntary expenditure limits. That seems like a fairly strong aggravating factor.

Mr. Williams said that staff accepted at face value the respondent's reason, which was that they had changed campaign consultants. So, to the extent that there was an issue about controls being in place, there is some mitigation of that aggravating factor due to the turnover that occurred. However, the fine amount of $3,800, from staff's perspective, is on the high end. $5,000 is usually reserved for more serious violations.

Chairman Randolph said she thought the respondent deserves a fine lower than $5,000 because there were enough mitigating factors. The more appropriate range seems to be in the $3,800 to $4,500 range. She explained that she would not object to staff's recommended amount. Instead, she wanted to spark a dialogue about voluntary expenditure ceiling violations, which generally seem like they should be fined at the higher range. She added that these types of violations are more similar to contribution limits violations or laundering violations than any other type of reporting violation.

Mr. Williams agreed and stated that staff will keep that in mind.

Commissioner Downey asked whether this might not have been better handled as a civil matter, but then realized that if it were to be handled as a civil matter, the Commission would be limited to the maximum fine of $5,000. He agreed that this is a fairly serious violation that is more along the lines of laundering and other grave types of violations. On the other hand, he added that he agrees that when someone voluntarily comes forward and admits a mistake, this should be encouraged. This is what occurred here. Mr. Dymally had no one in place to monitor the expenses, and his excuses were not the best. It seems the committee was a little sloppy and a little negligent. Commissioner Downey concluded that he would support the $3,800 fine as well, but that it was certainly on the low end.

Mr. Williams responded that he understands the Commission's point of view that these are very serious violations and that staff will handle them as such.

Commissioner Huguenin moved to approve Item #8.

Commissioner Downey seconded the motion. Commissioners Downey, Huguenin, Remy and Chairman Randolph supported the motion, which passed with a 5-0 vote.

ACTION ITEMS

Item #14. Prenotice Discussion of Proposed Regulations on Reporting Mixed Expenditures by Political Party Committees in Federal and State Elections (18530.3), and on Required Committee Bank Accounts (18534).

Senior Commission Counsel Larry Woodlock introduced two separate proposed regulations, 18530.3 and 18534. Staff brought these before the Commission in the past. Regulation 18530.3 sets out rules for mixed federal and state campaign spending by political party committees. It treats campaign reporting and contribution limitations for money that's raised by party committees under federal and state rules for purposes of influencing state or local election contests. Last December, when the Commission met on this subject, it was preoccupied by the question of federal pre-emption. Staff wrote to the Federal Elections Commission (FEC), and the F.E.C.'s response was that the Commission should have a concrete regulation on the books before the FEC could comment on whether it was preempted by federal law. As a result, staff is here to present regulation 18530.3.

Mr. Woodlock stated the memo explains that staff and representatives of the political party committees seem to disagree on three principal areas. The first bone of contention is whether Section 85303(b) limits contributions to these committees' Levin funds accounts. The second controversy is whether a party committee should report certain payments as transfers of individual contributions from the contributor's federal account to the state account with contributions allocated among individual contributors to the federal account. This is the part that parties especially do not like. The parties argue in sum that the federal accounts are federal committees and they cannot be forced to itemize contributions and contribution sources under state rules simply because they are federal committees and they report under federal rules. They are willing however to report the amounts that are spent, i.e., the amounts that federal committees invest in state and local campaigns but do not want to itemize the source information. Staff's response to this is that under existing law any federal committee that receives $1,000 or more in contributions for use in state or local contests or that makes expenditures of $1,000 or more in state or local contests becomes a state committee under Section 82013. There is no exception in 82013 for federal committees and what the parties are asking for is an exception to that statute which staff does not think the Commission has authority to grant. Third, there is a question whether state allocation rules should be required on state reports when federal rules lead to inaccurate allocations.

Chairman Randolph questioned what the Commission has been doing the last thirty years if 82013, the definition of a committee, is not a creature of Prop 34 and it's not a creature of the changing federal rules in this area.

Mr. Woodlock responded that his understanding is the Commission has always treated a federal committee as a person as defined under the Act, and as such, if that person involves itself in state or local election contests they become a committee just like any other kind of person. In other words, there is no exception for this. He added that he looked the previous day before at a matter that was taken up in 1994, relative to Congresswoman Roybal-Allard. At that time Ms. Roybal-Allard wanted to make contributions from her own congressional campaign funds to the "No on

Prop 187 Campaign." He stated that campaign was back in 1994 and was a very important and controversial ballot measure. This gave rise to a debate about whether Ms. Roybal-Allard could be required to report as a major donor to the "No on 187 Campaign". It was argued that the state was preempted from treating her in that fashion by federal law. The proponents of Roybal-Allard's position argued that any expenditure of campaign funds under federal law that did not violate the personal use statutes was presumptively for a federal political purpose. Federal Law occupies the area of spending in federal campaigns so the argument went that any expenditure of Federal campaign funds that didn't violate federal personal use statutes was presumptively for a federal political purpose and was therefore beyond the reach of state law regulation.

Mr. Woodlock continued by stating that the Commission wrote to the FEC on this point twice. He quoted a single sentence that was contained in the letter, drafted by then staff Counsel Hyla Wagner, who wrote to the FEC on this point. "A congressional candidate's committee is treated no differently than other major contributors to state campaigns under California Law." The FEC did not find that the Commission was pre-empted from doing that at the time. What was being discussed was a major donor committee under 82013(c). What we are fighting about now is whether the parties can find an exception for political party committees under 82013 (a), (b) or (c). The first question is not how hard it is or even whether federal law would pre-empt it now as it did not do twelve years ago.

Chairman Randolph asked if Ms. Roybal-Allard had asked the FEC as well.

Mr. Woodlock stated that he believed it was Ms. Roybal-Allard who asked the FEC and the Commission opposed it. The real fundamental question here is whether the Commission has the authority to say that 82013 or 85303(b) contains language that permits the Commission to forget about political party committees if they're federal committees. That is where the Commission should start when the Commission entertains public comment. Mr. Woodlock further explained that staff does not see it in the statute and stated he was sorry for that because Mr. Bell had sent the Commission a regulation which was attached. Mr. Woodlock added that he believes Mr. Olson agrees that it is like the regulation they would like to see. Staff's own draft regulation is the same as the regulation they had presented before so the staff may appear intransigent. staff would like to find grounds for a compromise if possible, but staff does not see how the Commission can not implement what the statute says. Staff does not see a statutory ground for compromise on these points. He stated that's where the staff is and that both parties seem to have their positions set in stone. The Commission has been talking too much about pre-emption and how hard it is for these committees to file state forms. What needs to be discussed is where the authority is for departing from past practices and essentially granting exemptions from committee status under 82013.

Commissioner Downey stated that he had come to this discussion today setting aside the pre-emption question and added that it is going to take care of itself down the line if the Commission does anything. Commissioner Downey stated he wanted to hear from both staff and regulated parties more about how difficult this regulatory scheme that staff has proposed is going to be for the regulated community. The pre-emption issue is very interesting but he wasn't sure that's where they needed to be that day and stated Mr. Woodlock would agree with that.

Mr. Woodlock stated that he agreed. The logical question is whether the Commission even has statutory authority to move in the direction that the parties want it to move in. It is important to understand how hard it is for the parties, but the Commission does have the logically prior question which the parties have really not addressed.

Commissioner Huegenin stated there was a matter he wished to have addressed. The political parties or any committees or PACs for that matter, collect funds. They expend them for political purposes to see to the election of candidates or the passage or defeat of ballot measures or the opposition to a candidate. Those expenditures are in the nature of hiring consultants, buying door-hangers, as in the case of the Boling Letter, and various other things. To the extent that there is a quarrel about how much of those monies must be accorded status of federal and how much are state, we can resolve that quarrel with some sort of formulation. The real question is when the political parties report this, as Commissioner Huegenin understood the proposed regulation, the Commission is asking them to go back essentially two fiscal years to list all of the persons who made a contribution to the party and to disclose all of those names as people who had some piece of making the expenditure. There is no way to track a contribution to a party, for example, if one were made against the party's use of the money in these finite expenditures that get reported on their report. One could do a first-in, first-out or a last-in, first-out, but those are all fictions. If somebody is trying to measure whether one has participated beyond whatever the limits are on their ability to make contributions in that matter, there is no way to do that. Even with the report that is being proposed.

Mr. Woodlock responded by saying that the Commission should recall that this is not a unique scheme that staff has dreamed up. Allocation and reporting of contributions is a well established procedure under both state and federal law. The problem here is what the parties are disputing is the use of state allocation rules instead of federal allocation rules. There are two different sets of rules. In effect, what they are arguing is that if they report unto Caesar in Washington what Caesar wants to hear, they should not be required to report unto California what they really spent in California elections.

Commissioner Huegenin questioned that even setting that aside for the moment, even if they do report a different amount to the state as one does on their state income tax as compared to federal income tax, what are they reporting to the Commission? Are they giving the Commission the individual names of everybody who made a contribution that might get to the state calculated amount and if so, what does that tell the Commission?

Mr. Woodlock explained they are allocating certain expenditures among certain contributors. He referred to it being described earlier as a kind of fiction and agreed it is. He stated it is an accounting fiction but it does have real consequences. For one thing, when they identify specific contributors with specific expenditures when the expenditures are subject to contribution limits, this limits the amounts that these identified contributors can later contribute. He added that when they identify and allocate by whatever formula through specific contributors, it gives the voters some sense of who is behind this expenditure. In some cases that may not tell the voters anything, but there may be interest groups or other well known people who turn up on the state reports. This kind of information is always of critical value to voters who are trying to decide who is behind the measure or who is behind a candidate.

Commissioner Huegenin asked if it is sufficient just to have a list of those contributors without identifying which ones in particular contributed which amounts to which items of expenditure which were actually made. He stated his point was that when the number of contributors that the political party committees have, it's not like the Roybal Committee where there is very limited and particular identification. These are committees that funnel thousands of contributions and the idea of trying to comb back through those contributions and identify specific amounts or portions of those contributions seems to be to try to dig the needle out of the haystack. He questioned what purpose this served. What do we know when we look in the window and see all these contributors? He stated he was uncertain what the benefit is.

Mr. Woodlock responded by pointing out what was previously said, that it is hard to identify individual contributors with individual expenditures, and why is there a need to anyway when we have a list. They do not want to give us a list. They want to have the committee itself identified as the contributor. The Commission does not get a list. What they're saying is we can go to the federal reports and figure it out there.

Commissioner Downey asked if the federal committees already have to allocate their contributions to the federal expenditures because there are, after all, federal limits.

Mr. Woodlock confirmed that is correct.

Commissioner Downey continued on to state we wouldn't be asking these federal committees to do something they haven't already been doing, that is allocating contributions to expenditures.

Mr. Woodlock stated they do the same thing under both federal law and state law. They just don't want to do it in this particular case.

Chairman Randolph asked if there were any other questions before hearing public comment.

There were no questions.

April Boling explained that she is still very concerned about this whole notion of this level of detail back to the contributors coming through, and there are several reasons for that. First of all, in the staff report one of the assertions that was made is that you really need to know whose money this is because someone might be in excess of the $27,900 contribution limit. She stated she believes it is important to remember that this question started, if you refer to the *Boling* Advice Letter, it was a door-hanger. The door-hanger had federal candidates, candidates for state elective office and candidates for dog catcher and school board. When we have this sort of virtual deposit coming back from the federal to the state, which is really what we're talking about when we talk about a contribution coming back that's going to be allocated to a bunch of people, if it's a virtual deposit one could certainly virtually deposit either into a general checking account under that new regulations or the restricted one. She questioned how it is known when the payment is made for this door-hanger that Mr. Smith, maybe Mr. Smith gave $27,900 and we deposited into the general account. Now there is going to be another $114.00 from Mr. Smith that somehow is attributed back to this door-hanger, she suggested that if it is real cash coming

in, she would put it into the restricted account anyway. It's not as though there is anything being violated in excess of the $27,900.

Commissioner Downey stated that there will not be carte-blanche on whom and what goes on the door-hangers if the Commission adopts the format of staff's recommendation. There will be a formula that states how it can be done, but not completely broadly choosing among contributors. You will either go LIFO or FIFO.

Ms. Boling stated it is worse if it is a required allocation because then she would be really setting some people up. She could always point to the regulation and state she didn't do it, the State made her do it. What you will get on the reports isn't going to allocate these things back to a particular measure; it's really coming back to an overall expenditure. She continued that the other part that she finds troubling is that if one is about to do a door hanger and the Commission is asking whose money from the federal money is behind the door hanger that is one question. If it is asking whose money is behind the door hanger for candidate A, candidate B and C, now we have a completely different question. She stated she just did not see that it was workable.

Chairman Randolph asked staff to comment.

Mr. Woodlock stated the Commission does not care. All of our regulations ask is that you depart from the federal rules if the rules are inaccurate. Our only interest is accurate reporting of how much is spent on the state campaigns. Allocation of contributions is a fact of life in both the federal and state rules. When we say we want allocation among individual contributors, not only are we consistent with the normal treatment of these kinds of expenditures under state law; we are treating this movement of money as a transfer of contributions from point A to point B which enables the parties to stay in business. They would quickly be shut out by contribution limits if they want to be the sole person identified as a contributor. Finally, he stated, staff is just as concerned on the problem of inadvertent violations. That is why we have subdivision (c) in this regulation which purports to address this problem of inadvertent violations by saying nobody who has been allocated, whose money was not earmarked, will be charged with a violation of 85303 (b). He continued that if there are additional problems with additional kinds of inadvertent violations, such as for major donor rules, we'll include that as well. This is not something staff is not sensitive to and we've addressed it.

Chairman Randolph questioned an odd situation where if someone is searching for a contributor, they'll see they made "X" donations in "X" state or local races and they're also designated as making a contribution pursuant to these rules. When added up and the numbers do not match because they're reporting as a major donor if they reach their limits in the state and local contexts but they will they have this phantom contribution out there?

Mr. Woodlock questioned how this is different from what goes on in normal state and federal practice of allocating contributions. This is not a new concept; it's something that takes place in most every federal and state jurisdiction in the country.

Chairman Randolph asked how Option 1 relates to the rest of the reporting issues. She questioned if Option 1 is completely separate from Option 2 and Option 3.

Mr. Woodlock answered that Options 1, 2 and 3 are separate and distinct. He explained that Option 1 seeks to make it clear that if someone donates $27,900 to a party committee and it has a Levin Fund account, they can't then donate another $10,000 to that same party committee's Levin Fund account when it's earmarked for the very same purposes that you made the $27,900 contribution.

Commissioner Downey asked if that purpose has to specifically be to support or oppose candidates.

Mr. Woodlock answered yes and stated it is the limited reach of 85303. He explained since the parties have insisted they can contribute to the committee and the Levin Fund, and the Levin Fund is not subject to state contribution laws, he believed it reasonable to assert the principle that "yes it is," and that's why it's here.

He stated the last phrase is new and it was added because the parties were asserting contributions to Levin Funds were completely separate and apart from any state contribution limit. We're hoping to make it clear in the regulation to the extent that the contribution to the Levin Fund is made for the very purpose which is limited in 85303.

Chairman Randolph referred back to another topic in which the parties don't attribute back to contributors that it will just be a contribution from the federal party to the state party. She asked is that is a given or could it just be a transfer of contributions from the federal party to the state party.

Mr. Woodlock stated he was not sure. He stated there was a dichotomy here. It could be a transfer of contributions from other contributors to the federal committee or it could be simply a contribution by the committee itself. He stated by implication, if you're going to call something a transfer of individual contributions, evidence would be expected that there are actually individual contributions that are being moved. He stated it's hard to imagine that something could be described as a transfer of individual contributions and not be required to show that they really are individual contributions given by discreet persons.

Chairman Randolph asked for any public comment.

Lance Olson, representing the California Democratic Party, stated that federal law has imposed upon political parties certain basic requirements in terms of how they fund basic activities. They changed the rules with the Bipartisan Campaign Reform Act, BCRA. They federalized many of the activities that traditionally were thought of as non-federal activities including direct support of non-federal candidates, state and local candidates. There's a myriad of methodologies that can be used as examples. If one is putting out a mailer, broadcast communication, hiring staff, each one of those is regulated in a different way by the FEC. He stated his concern is that the FPPC is now doing the same thing.

Mr. Olson went on to use an example of Employment of staff, no small matter particularly for the state parties and in an election year. The FEC has three rules for how you pay for staff depending on the percentage of time they devote to "influencing federal elections". If they spend no time influencing federal elections, then we are permitted and required to pay them 100 percent non-federal funds. If those staff were working directly in an assembly or senate campaign, they'd be paid out of the Candidate Support Account. If that same staff person were to devote between 1 and 24 percent of their time in influencing federal elections, then they would have to be paid under the FEC allocation formula. If they spend 25 percent or more of their time influencing federal elections they have to be paid 100 percent out of the federal account.
It is possible you'd have an employee who was devoting 50 percent of their time influencing federal elections and 50 percent of their time working in an assembly or senate campaign, under the FEC rules they would have to be paid 100 percent with federal funds. He continued both the staff and the Bell alternative would have that activity disclosed as expenditures by the state party, which 50 percent of that employee devoted to that particular assembly or senate candidate. It would be disclosed as expenditure that the federal committee made in support of that particular candidate. Imagine the party hires hundreds if not thousands of people in the final days of an election. What the FPPC is asking us to do is figure out the allocation for purposes of who is supporting what candidate and put that on a schedule D at the appropriate time or maybe file a Late Contribution Report. The FPPC is also asking us to go back and apply these various formulas to the contributors who have given money to a federal candidate. He stated that is an extremely complex problem and will be extremely difficult and burdensome for the political parties to do so. He stated that he believed the dialogue between Mr. Woodlock and Commissioner Downey over allocations was incorrect. He stated that federal committees file monthly. It's more frequent than state law and it's online at the FEC. He stated he did not know what was gained by trying to figure out that one of those federal donors may have indirectly paid for some expenditure that influenced a non-federal election. If it's disclosure, essentially that disclosure already exists and exists online.

Chairman Randolph asked about the staff's response that allocation happens all the time. She questioned how this is any more difficult.

Mr. Olson responded that in terms of allocation of contributions, he only knows of one circumstance where it occurs. He stated he did not know if it happens at the federal level.

Commissioner Downey stated he meant to say "expenditures" and probably said "contributions" earlier by accident.

Mr. Olson stated it's been mentioned a couple of times that it's a common practice and it just doesn't happen at the federal level. He stated the only circumstances he was aware of is the one that Mr. Woodlock referenced: a federal committee that comes to California and starts making contributions, you have this rule, the one-bite rule under your definition of contribution that says any committee that makes contributions here then becomes a recipient committee. That's the once circumstance and a very limited circumstance. He stated to him it goes to the question of authority. Mr. Woodlock raised the question what is the authority to do this? You actually exempt federal candidate committees from FPPC's rule and treat them as major donors. You do not treat them as recipient committees as you would the political party. FPPC already have an

exception in your interpretation of your rules with respect to federal candidates. The filer would not be required to file as a recipient committee or is not required to disclose the contributors to their committee. He stated he believes the Commission already has a big exception.

Chairman Randolph asked if you're not allocating back to contributors then what are you doing. Are you transferring to the federal to state and if so why doesn't the contribution limit apply?

Mr. Olson responded by saying he would not treat that as a contribution from the federal committee to the state party for purposes of contribution limits.

Chairman Randolph asked if it's an expenditure of the federal party.

Mr. Olson stated it was. He went on to the issues of Levin Fund limits applying to the 85303 limits. He stated that the word "earmark" doesn't appear in the proposed regulation so Commissioner Downey's three examples would be governed, not just the second one.

Chairman Randolph stated it doesn't use the word earmarking but it does say for the purpose of making contributions.

Mr. Olson stated that as he understands earmarking, it means an understanding that at the time I made my contribution, that it would be used for that purpose. He stated there were some advice letters defining the word "earmarking" and there is an understanding it will be used in a particular way.

Mr. Olson explained this all began because he asked for advice a number of years ago on whether Levin funds were reportable. He finds himself here fighting a regulation to impose all these additional regulations on the party and still do not have an answer to whether Levin funds are reportable. He stated that at least the Bell regulation does address what we do about Levin funds, how we treat them as major donors and addresses the expenditures that are made from the federal committees. He continued that in his opinion, it is the big and important piece of what the Commission should be concerned about: limits and knowing where we are spending our money.

Mr. Woodlock stated it was no surprise that the Democratic Party is thrilled with the regulation that the Republican Party would propose but they are not so happy with Legal staff's. He explained that 82013 has three subdivisions which provide for the creation of a recipient committee, independent expenditure committee, and a major donor committee. It applies to any person or group of persons. The political party committees are persons under the Act. How is it that they can raise and spend money in California over $1,000 threshold in 82013 and not become subject to the normal state reporting rules and contribution limits? Mr. Olson hasn't really told us what he's done, he's cited some staff created anomaly for a major donor committee. Maybe staff got that wrong, let's think about that too.

General Counsel Luisa Menchaca stated she wanted to clarify on the issue of the Roybal-Allard and the question of authority with respect to a major donor committee. The staff did not create an exception. With respect to that, we are dealing with a candidate who has raised money to run as a

federal candidate and has a federal committee. As part of his or her political strategy, they would like to make a contribution in a state election. The source of the contribution is the federal candidate and if they make an expenditure or contribution of $10,000 or more, they qualify as a major donor under the statute.

Chairman Randolph asked if that conflicts with the whole "one bite of the apple" rule. You have money, you have received it from contributors, and even if they didn't originally give it for the California political purpose, if you then use if for the California political purposes, then the next step would be to look at all those contributors.

Ms. Menchaca stated that in the federal committees you have federal contributions made to the federal election itself. You're not even undertaking the analysis at that point, it's whether these are state contributions or not. They're money that the federal committee receives in the conduct of its federal activity. The staff is not creating an exception from our viewpoint. This would be different in terms of the analysis of committee in that the federal parties are collecting money that is earmarked for state candidate activity. You look at the source, which is the source of this contribution that ends up in this state election, and you do that, you end up limited to the cumulative contributions in terms of the committee itself and the lower level of activity that can occur as a result of the contribution limit. The other way you get greater activity but you have to deal with the allocation. Staff does not view that in terms of creation of any kind of exception.

Mr. Woodlock stated that if it were an exception, if it's an improper exception we can consider that question again. The political party committees in the state are general purpose recipient committees. The federal political party committees would be the same thing if they started raising money to spend on California elections. He questioned if they do that, where is their authority to say, looking in the statute, that we will treat everyone else as a recipient committee if they engage in this conduct but not a political party committee. That's the question the political parties raise when they're proposing the Bell regulation which exempts them from some of the reporting requirements that any other organization would be subject to for the same conduct. That's the authority problem we have. We have to solve that part of the problem before we go onto the wisdom of the regulation. He questioned if there was an easier way to impose these informational requirements on the parties, for example. Before we go there, we have to ask ourselves do we have the power even to concern ourselves.

Chairman Randolph asked Mr. Woodlock if he had a response to Mr. Olson's point.

Mr. Woodlock stated Mr. Olson is saying that it is too hard for the professional party treasurers to get the information and wants the public to access the federal website and figure it out for themselves.

Chairman Randolph stated she believes what Mr. Olson is really saying that staff wants a fictional rundown of a structure for those contributions. His argument is that that does not help us because it's a fiction anyway.

Mr. Woodlock referred to the state rule as – you have a pot of money, and 10 people contributed to it and a certain amount of that money was spent on a certain activity. We're talking about a fungible item here: money. People have poured money into a pot and they start taking it out. If you are a contributor of 10 percent of that money we will look at the proportional representation of each contributor in that fund. When a portion of that fund is spent, we will attribute the allocable portion to each contributor. If you spend a $100 out of that fund, having 10 donors, one donor contributed 10 percent, you say that contributor was behind 10 percent of that expenditure or contribution. It's an accounting fiction but it's a prevalent one because when you're dealing with money coming from several sources into a fund, money is fungible. It is no longer possible once it's commingled to separate back out again the contribution of each person. The only rational way of dealing with it is proportional representation.

Mr. Woodlock addressed the question of why the Commission cares who is behind any given expenditure. He stated the Commission does care and this is why we have these types of reporting rules in the state. This takes us back to the authority issue because we have rules like this for everyone else in the state and the parties want to be exempt from it.

Ms. Menchaca stated this is one of the frustrating things for both the staff and members of the public. There are a number of things that are important to staff but not to the public. It is a shame that the FEC did not choose to ask the Commission to draft a regulation because the regulation that Mr. Bell submitted is actually the type of regulation staff would consider if the FEC came back and said you're pre-empted. You must find some other way to make this work. Without that the staff feels this proposal is appropriate unless there was a statutory amendment to change it.

Chairman Randolph stated these are contributions to federal committees and expenditures of a federal committee.

Ms. Menchaca replied that the federal activity is reported pursuant to federal rules.

Chairman Randolph stated there is nothing analogous to this.

Technical Assistance Division Chief Carla Wardlow stated that in prior meetings Ms. Boling testified that when money would come into her political party committee, she decided which account to put it into. In most cases the contributor is not designating which account, federal or state, that the money goes into. It is not as clear as the donors making these contributions to the federal account.

Commissioner Remy asked Mr. Woodlock to expand on the single contribution limit of $27,900.

Mr. Woodlock responded that if we treat a transfer of money from a federal account to a state account as a transfer of contributions by numerous individuals from one account to the other, you can have several more such transfers. However, if you engage in the fiction that it's really not a transfer of money that other people gave you but it's your own money, you are treating yourself as a single person with only one contribution limit.

Commissioner Remy questioned if this was the Bell Proposal in the draft.

Mr. Woodlock stated that would be the implication if the party considers itself to be the source of the money and no one else.

Commissioner Remy asked if we would then file an enforcement action at this time.

Mr. Woodlock responded that if we get to that point and the party is being treated for all other purposes as an individual person, then that party would be subject to individual contribution limits.

Chuck Bell, of Bell, McAndrews, and Hiltachk, stated he believed there is some misinformation here and they have come up with a proposal that concedes some points with respect to preemption and would be helpful in moving this along. He stated staff's approach complicates things needlessly and that is why another approach should be looked at. He stated he associates himself entirely with Mr. Olson's remarks and the Zackson letter was good.

Mr. Bell responded to Ms. Wardlow's point by saying they do not allocate the money on their own. He stated they specifically solicit money with the contribution solicitation that discussed what they can take, where it can be placed, what the limits are for different federal and non-federal accounts, and even say that people who give in state elections have to file major donor reports. We are trying to ensure that when a contributor writes one check or several checks that they know exactly what has been solicited and where it is to go and how it is compliant with the contribution limits. He stated that authority on the "one bite rule" is the Commission's regulation and interpretation of a particular circumstance in which a non-political committee made expenditures over a period of time, the latter expenditures would be attributed as if that non-political organization were a committee. It's derived from a statute and is an interpretation that could have been written differently. The point of the Roybal-Allard letter is that the Commission did come face to face with the FEC on that and took the position that it would not treat a federal campaign committee that had solicited money for a federal purpose, but used it in a state election as a recipient committee.

Mr. Bell explained his next point on authority was that his proposed regulation is the only one that specifically relates to authority. In each provision he tried to say that if you have a certain type of expenditure under a specific provision of federal law that is functionally used for state political purposes, then it will be a contribution, expenditure, or an independent expenditure. He believes there are strong tie in his regulation to particular activities and what they would be deemed contributions, expenditures, independent expenditures under state law.

Mr. Bell stated his third point was referring to Levin money. Levin money was a creation of the Bipartisan Campaign Act. They federalized things that we had been allocating in a certain way. Only federal money can be used to pay for those; federal Levin funds are typically for things like what we have considered in the past non-federal share of voter registration, get out the vote and generic party activity.

Commissioner Huguenin concurred with Chairman Randolph's general suggestion relating to the elimination of Options 2 and 3. There is the one approach taken in the draft submitted by Mr. Bell and a rather different analytical approach taken in the draft from staff. Commissioner

Huguenin sensed an interest, from both staff and the regulated community, relating to possible conversations among the staff, Mr. Bell, Mr. Olson, and anyone else interested in reaching an agreement relating to a method of approach or some actual language for a regulation that would omit Options 2 and 3. Commissioner Huguenin offered that, relating to the reports needing to be made in conjunction with the combined state and federal November election, people would be requesting guidance about what to put in those reports.

Commissioner Downey's primary focus was to resolve his indecision on whether there would, indeed, be difficulty on the part of reporting parties to comply with staff formulations. He believed there would be. He was persuaded by the remarks of Ms. Boling, Mr. Bell, and Mr. Olson that it's another layer of difficulty to impose on the regulated community. He stated there was good justification in staff's recommendation to try to get at the true source of the money that's supporting a candidate or measure in California. He would like to see reporting and was perplexed by the question raised by Mr. Woodlock, even if Mr. Bell's approach were to be adopted. He questioned whether the political parties would be subject to contribution limits if they are, in fact, the contributing parties and not the contributors behind the parties, adding that Mr. Bell spoke about that, but he couldn't quite understand how one would get around that.

Mr. Olson defined "preemption" as when federal law states that federal committees of political parties *have* to spend a certain amount of federal money which directly influences a non-federal election (e.g., supporting a non-federal candidate) and, being required to do that, the Commission then cites that the law has been violated because of an excess of limits.

Mr. Woodlock stated that his understanding of federal law was that the Federal Elections Commission is interested in removing soft money from federal election campaigns -- to limit the use of Levin funds in federal election activities to the kinds of activities that were traditionally appropriate for soft-money expenditures. For example, one cannot use Levin funds to fund an advertisement that urges support or opposition of a clearly identified federal candidate.

Mr. Woodlock stated that, on the other hand, the Federal Elections Commission does not care about state candidates, so one could use Levin funds to run an ad urging support or opposition of a clearly identified candidate. Although it is not a problem at this moment, Mr. Woodlock stated that federal law requires certain expenditures whenever one is making a federal expense. When in doubt, federal law requires that more federal money be used than state money.

According to Mr. Olson, if the California Democratic Party broadcasts a television ad urging people to "vote for Diane Feinstein and vote for Phil Angelides – candidates for U.S. Senate and Governor," the federal rule in BCRA states this ad must be 100 percent federally funded. If a regulation is adopted that imposes limits on how much the party is receiving from its federal committee, that is clearly preempted. To report that as an expenditure supporting Phil Angelides, and it is an in-kind contribution or a monetary contribution from the federal committee, clearly in excess of $27,900, it cannot be done. In Mr. Olson's opinion, that would be "preempted." There are letters that deal with contribution limits where the FEC has said that the state cannot impose a rule that would limit what federal law allows.

Mr. Woodlock agreed adding that is part of the reason why the federal party is not treated "as a person."

Mr. Olson's response to Chairman Randolph's suggested alternative of going back and allocating to federal contributors was that the whole "one bite" rule was a creation of a regulation adopted interpreting a statute as to what a contribution is and that adopted rule has actually now been carved out as an exception for federal candidate packs. They are not subject to the "one bite" rule under the Commission's interpretation. Mr. Olson added he did not see any trouble with the Commission, who has complete authority under their regulatory powers, interpreting "contribution" through their contribution regulation and specifying in the regulation that it was not a contribution from a federal political party, just as the Commission has exempted federal candidates.

Chairman Randolph recommended Mr. Olson review Mr. Bell's draft, think about any concepts in his own draft that need to be included in Mr. Bell's draft, and come up with something to propose for adoption in December.

Ms. Menchaca and Mr. Woodlock agreed to meet with Mr. Olson, as well as with anyone else, to discuss this very difficult issue.

Mr. Woodlock introduced the second part of Item #14, regulation 18534. Mr. Woodlock stated that staff had offered some suggestions, but would welcome any better suggestions. Regulation 18534 also grows out of the contribution limits of Section 85303, but is broader in scope as it does not apply only to political party committees. The problem being dealt with in this regulation is that Section 85303 limits contributions made for a particular purpose, but no other contributions made for any other purpose at all. The problem is to find a way to segregate funds contributed for the purpose limited by this statute from other funds not limited by operation of the statute. Generally, everybody seemed to agree this was a good idea, but the devil is in the details. Options are not set out in this regulation as in the last one to identify points of contention which can be taken out or put in. Mr. Woodlock then proceeded to go through some highlights of the problems that existed, suggestions the Commission had made at its last meeting, and staff's attempt to solve those problems. First: the naming conventions – how does one name these accounts – assuming you're going to have two different kinds of account? The thought was that consideration should be about a "general account" as an account that could be used for any purpose. Working with this at the staff level, a consistent confusion was found because "general," to some, meant money from any source, i.e., unlimited money, while to others, it meant money that could be used for any purpose. It was realized that if a single word were to be used here, half of the population would interpret it to mean that it refers to "purpose," and the other half would interpret it to mean that it has something to do with "source." This appeared to be a serious problem. The decision was made to adopt a naming convention whose meaning would clearly be interpreted as one talking about a "source" or a "use." Staff came up with two proposals: (1) "all-purpose" and (2) "restricted-use" accounts -- thought to be *intuitively* easier for people to understand. Mr. Woodlock suggested staff is open to taking suggestions on other names if the above-mentioned proposals are not good ideas, adding "[t]his shouldn't defeat us."

Mr. Woodlock said that at its last meeting, the Commission was concerned about minimizing the impact on small committees and, in particular, that staff would take care to not require committees to have two, three, or more accounts. Under this regulation there is no requirement for any particular kind of account. However, staff thinks that most committees, especially small committees, will want a single, all-purpose account, because these are committees that will not typically be taking in huge amounts of money that would be over the contribution limit. Mr. Woodlock suggested they can take all of their funds, throw it in this all-purpose account and use it for "anything under the sun," making life easy for them. However, there are practical considerations which suggest to staff that some of these committees are going to need a second account to prevent commingling of limited funds with unlimited funds. Mr. Woodlock stated staff had to develop a rule which states one cannot take money out of a restricted-use account and transfer it into an all-purpose account. Without this rule, one could be taking money contributed without reference to the limits and placing it into an account set aside for monies contributed under the limits. The Commission had previously supported this thought at its last meeting. It seems like a pretty obvious anti-commingling feature. Mr. Woodlock added, "if we have that feature, then that means that the small committee, which thinks it can get by with a single all-purpose account, is going to be stuck when somebody wants to make a donation out of a restricted-use account. They would have to go out and open their own restricted-use account to take that money in." It's a practical problem which, regardless of how these committees are named, will continue to come up as long as there is a requirement on segregating the two kinds of accounts and not allowing monies to flow back and forth between them.

Mr. Woodlock continued that there was some dispute at the last meeting from the political parties, again, who argued to flip staff's positions, that the Commission lacked authority to promulgate a rule that prevented commingling of funds from these two different accounts. The political parties pointed out that the statute does not say that and so it cannot be done. Staff's position is that an obvious anti-circumvention measure is certainly imposed by in the statute and so staff does have authority.

Mr. Woodlock advised that this regulation permits splitting of over-limit contributions on the day of deposit – a suggestion made by Ms. Boling at the last meeting that staff tried to incorporate. There was also a request that the 14-day transfer period in subdivision (c) be expanded to 30 days. Staff looked at the regulations and thought that was probably a bad idea for two reasons: (1) how much does one gain; if making a deposit on day one, can't it just be taken out the same day? Why are 30 days needed? (2) there are other 14-day action provisions very similar to this and staff is afraid that that would cause confusion.

Basically, in subdivision (d) of this statute and also in 18531(b), there are provisions that call for return of excess contributions, all within 14 days, so a track record has already been established that one has 14 days to handle these problems. Staff was concerned that introducing a 30-day period for one of these similar kinds of problems would cause some people "heartburn" and perhaps be cause for some inadvertent violations that aren't really necessary.

Chairman Randolph pointed out language on page 1, line 10, and then again on line 22 which states: "Checks drawn must include the name in the title of the account printed on the checks." She thought it would be better to mirror the language on page 3 which states: "A check with the

proper designation of the account on its face." Her rationale is that if one doesn't happen to have printed checks for that account or had old checks needing to be used, one can write information on the face of the check that "this is from your all-purpose account or your restrict-use account." As long as that designation is on the face of the check that would seem to be enough, since it was enough on page 3.

April Boling commented that "all purpose" vs. "restricted" are perfectly good terms and work fine for her. Her concern is not what the accounts are called, as long as everybody is using it the same way and the definitions are understood by all.

Ms. Boling had no complaints about this concept, but had questions relating to paragraph (b), about having 14 days to go from one's restricted account to the all-purpose account. She suggested that language be written in such a way that one would have 14 days to "make the pot right," whichever direction it is going. She stated this is because many small committees will accept credit cards, and if one is going to try to have incoming credit card contributions going into two different committees, one will be faced with the charges and "everything else." Most small committees will, in fact, have their all-purpose account and may, from time to time, need to open, and then maybe subsequently even close, their restricted-use account. Because of this, Ms. Boling felt it would be nice to have it set up such that one's incoming credit card contributions could go into his/her all-purpose account and then anything in excess of the current $5,600 could transfer the other way. She stated, "I don't think there is any great value in having this transfer only go one way so long as – and as it says here – 'you get to the point where nothing in the account exceeds the maximum allowed by law.'" In this case, an amount is going from the restricted to the unrestricted -- a transfer made will not constitute a contribution in excess of the limits. Ms. Boling did not believe one would purposefully make a transfer of monies that would end up in excess of the limits.

Ms. Boling's next question related to general purpose recipient committees, where the restriction is $5,600. If she received, for example, a $10,000 check, would she have the contributor sign something that states "anything in excess of $5,600 is going to be used for purposes other than election of candidates to state-elect office." Her understanding is that that requirement will go away, because line 21 discusses earmarked contributions. Having received just a general $10,000 contribution, once we get this in place, will we be able to get rid of that extra requirement? Also, "a contribution that's earmarked" (top of page 2 of the regulation), and here we're talking about someone who has specifically said on their check that "I want this to be used for a candidate for elective state office" and the check is in excess of the amount that can be accepted – this is saying that the check has to be sent back. To Ms. Boling, this scenario appeared to be one that could easily be remedied with, perhaps, a letter by the donor stating their intention. "Is it really necessary to send it back, or can they not simply give us something that says, 'no, I'm okay now with it being that way.' People write all kinds of interesting things in the memo sections and sometimes it just takes a letter to get it squared away to understand what they really meant."

Mr. Woodlock was an "agnostic" on Ms. Boling's last point. He thought it was basically okay, but wasn't sure how staff would write that rule in there.

Chairman Randolph remarked it seemed it would be "less clean for auditing purposes." And, if one were to go through the trouble of going back to the contributor and saying, "okay, you need to write something explaining what you wanted," then, is it really that much harder to take the next step of returning the check and saying, "okay, can you re-write the check and give me more information."

Mr. Woodlock responded he thought it would be difficult to write the rule in a way that would be clear to all and in such a way that would not muck up the audit trail – this being his principal concern. Going back to page 1, around line 20, Mr. Woodlock explained the reference here was to multiple donations, with the discussion being about the "cumulative effect" – a reminder that the total amount should be considered.

Ms. Boling redirected Mr. Woodlock and Chairman Randolph to the bottom of subparagraph (b): "A transfer made pursuant to this subdivision will not constitute acceptance of a contribution in excess of the limits as set forth in regulation 18531." Commissioner Downey and Chairman Randolph corrected Ms. Boling, stating this quote was found in subdivision (c); Ms. Boling responded that on her version (printed out "yesterday afternoon), the letter was (b). Mr. Woodlock became concerned as to what was "now missing." Chairman Randolph asked for someone to get the correct version of this regulation to Ms. Boling.

The differences in the draft were changes made by Carla Wardlow, who added subdivision (a) as it went out in the package to clarify discussion was about general purpose committees receiving contributions subject to the $5,600 and $27,900 limits, as opposed to the types of contributions they were making. Chairman Randolph confirmed that language in subdivisions (b), (c), (d), (e), (f), and (g) were the same, but just numbered incorrectly. She asked that the two versions be compared to ensure all differences had been covered.

Redirecting the meeting back to "a transfer made pursuant to this subdivision", Ms. Boling did not agree that this language was not referring to totals, but rather referring to the time when one has money in his/her restricted account. The sentence, she states, is confusing in that it is saying that a transfer would not constitute acceptance of a contribution in excess of the limits. Commissioner Downey agreed it was both redundant and confusing because earlier it states one could make the transfer as long as the total amount deposited does not exceed the limits.

Ms. Menchaca advised that, in various parts of this regulation, staff was trying to incorporate language that matched up to regulation 18531 which states when one accepts contribution limits, one only has 14 days to correct that. Staff wanted to ensure the people knew that and so they would have to comply with both. She suggested perhaps making that a separate regulation and recommended going back to regulation 18531 to ensure compliance is being met versus the reference at hand, which appears to be a source of confusion. Chairman Randolph agreed and asked that it be removed or an alternative proposed that is less confusing.

Ms. Boling restated her issue relating to credit card contributions starting out in one's all-purpose account. Page 1, subparagraph (c) refers to the ability to, within 14 days, be able to move money from one's restricted account to the all-purpose account. This paragraph does not allow movement from one's all-purpose account to the restricted account. The theory being one is not

to be taking over-limit contributions into an all-purpose account. The problem, however, is with small committees. They do not want to set up the committee to be able to accept credit card contributions into both checking accounts. They would like to be able to bring that money, for example, $10,000, into the all-purpose committee and then transfer the $4,400 within 14 days over to the second committee to make the pot right. The way this is written, they will not be allowed to do that. For the smaller committees, Ms. Boling thought this is unduly burdensome. She believes the goal is to, within 14 days, ensure the $5,600 has been placed into the proper account and anything in excess of that is not in there. She doesn't know that it would be any better to have the money move left to right or right to left, as long as within 14 days it is correct.

Chairman Randolph asked for input on these comments.

Mr. Woodlock commented that there is a problem with accepting an over-the-limit amount into an account that is set up especially to observe the contribution limits.

Chairman Randolph agreed saying she thought the entire purpose of this regulation was to ensure that one's account that can be used for things not subject to limits –excess monies always go in there first and are then distributed to the restricted account. Mr. Woodlock agreed saying if there is a small committee that never anticipates getting an over-limit check, then it does not matter because it will all go into the all-purpose because it will never be over the limit. He repeated his belief that there is a problem here because it creates an exception that defeats the whole rationale of the rule.

Ms. Boling queried if a small committee is having a dinner and receives a $10,000 credit card contribution, is the committee not to accept this contribution unless it is in the form of a check? Mr. Woodlock responded that the small committee can set their account to accept credit card contributions. If the small committee thinks they are going to get a lot of credit card contributions, and some of them may be over limit, and they don't want to incur the expense for having credit card donations to both accounts, let them have the credit card designation on the restricted use account so that the monies can just go in there and they can transfer it back out. Ms. Boling did not disagree with Mr. Woodlock that this could be done. She did restate that smaller committees will, in the course of the year, perhaps have only two incoming contributions when this will occur. You're forcing them to set up a second account for the overage; they may want to spend that out and close that account. She believes the practical answer will be that the smaller committees will simply not accept those credit card contributions because of what it is forcing them to do by way of the allocation. When the regulation was originally established, as Ms. Boling recalls, small committees were able move monies back and forth.

Chairman Randolph thought it had always been set up so that when one went into one committee, it was just a matter of which way it would be set up. Mr. Woodlock agreed, adding that Ms. Boling is basically talking about re-writing a regulation to allow it to go both ways in order to accommodate small committees that may have very rare events that they'd rather not deal with; staff's point is that staff would rather not deal with this. The fact that this does not happen very often cuts both ways, according to Chairman Randolph. If on occasion, if someone wants to give you an over-limit contribution, you'll have to say, "We mostly accept contributions within the limits because we like to use them for candidate support, but if you want to give us an

over limit, we'll use the contribution for other purposes. Could you please do it by check, instead of by credit card?"

Mr. Bell had two comments: The first comment was that he had done an informal poll of people with the all-purpose and restricted account language and, unanimously those people thought it was counter-intuitive to use those terms in that way. The second comment was that he shared Ms. Boling's comment and urged that the Commission allow for some sort of redesignation by letter, adding that The Federal Election Commission has that and that the language is readily available. He thinks it is helpful and not an audit problem because if it comes up in an audit, your obligation as a record keeper would be to have that document which specifically says that you can do it. Referring to the ALJ case (on next month's agenda), Mr. Bell stated there was a huge amount of confusion among donors what these accounts are and what the limits are. If this could be simplified and not have counter-intuitive problems, Mr. Bell stated it would be more helpful.

Mr. Woodlock asked Mr. Bell to send him the language under discussion, so that he does not find a regulation different than the one Mr. Bell has in mind. Chairman Randolph asked that staff include it as "bracketed" language when it comes back.

Chairman Randolph opened for discussion the harder question of the names for these accounts. She was for all candidate support and non-candidate support. But, the concern was if you're supporting a local candidate, which candidate are you talking about and it seems names have been kicked around.

Mr. Woodlock responded he did an informal poll and found that people could not figure it out. He believes it would be nice to come up with something that is not counter-intuitive for Democrats and Republicans. He agreed that what Ms. Boling said was true. We need to settle on names. Chairman Randolph stated once a name is selected, the people will get used to it. She does not think it will take that long to get used to having these names and to knowing what they mean. Mr. Woodlock thinks they should be as intuitive as possible, but knows it may be impossible to satisfy everyone.

Carla Wardlow agreed it was counter-intuitive, but thought it was the best way to describe it as "have the money going out," and she thought it could be explained in the manuals and perhaps have a fact sheet placed on the web site defining the terms for purposes of what money goes where.

Chairman Randolph stated that the real issue is when one is looking at the names of these accounts, does the name apply to the money coming in or does the name apply to the money going out. Where it seems counter-intuitive is where people are thinking it's the money going in. If staff can get the people to understand that we're talking about the money going out, then maybe people will get it. Chairman Randolph recommended it should be kept as it is for the adoption phase and if someone else comes up with a better idea, let the Commission know.

Commissioner Huguenin was concerned about the small committees Ms. Boling doesn't represent, but spoke for, nonetheless. He believes it is possible to put some kind of exception in

which permits the occasional movement of money, especially because of the fact that audit trails exist, particularly with credit card funds, on bank statements. He stated that the idea that we have to run it into the account that cannot be used for candidate expenditures is counter-intuitive. He thinks it is going to be counter-intuitive to the sense of the treasurers of the small committees and they will talk to their banker about the possibility of taking credit card donations. "The bottom line here," stated Commissioner Huguenin, "is that we are not in the business of getting in the way of the way people do politics. We're supposed to facilitate that. Our regulations are not supposed to impair it." He commented that, in his view, if there was some way to craft some kind of exception that would permit that, it would be a good thing.

Mr. Woodlock was not averse to that and agreed that the regulations should have some purpose other than making life difficult for the regulated community. He brought to light that staff gets a lot of criticism relating to the length and complexity of regulations. The regulations get long and complex for two reasons: (1) when there are evolving campaign practices perceived as misbehavior and where staff has to keep adding on new subdivisions as patches to cover up loopholes as they are discovered and abused, and (2) adding exceptions as everybody comes forward with a sign asking for this or that exception – every exception being reasonable on its face, but soon you have 14 new subdivisions. Mr. Woodlock's concern is always that of a draftsman – how can it be done cleanly and neatly so as not to muck up the regulation.

Chairman Randolph stated that it seemed in conflict with the whole purpose of the regulation -- money is put in one pot and then moved to another pot, and that's the way it is tracked. As a committee, that's the way of ensuring that money is not being passed on in violation of the limits. She couldn't envision how one could draft something, e.g., "Gee, it only applies to small committees who take these things every once in a while that we don't want to impose an administrative burden on," without it just completely blowing a hole in the whole scheme.

Mr. Woodlock agreed with Chairman Randolph and, for Mr. Woodlock, that's what makes it so difficult, in his preliminary thought, to write a rule like that because "it does sort of say, 'Notwithstanding everything we've just said in these limited circumstances, you can do the opposite.'"

Chairman Randolph called for other comments or questions and there were none. She stated the Commission could move forward to adoption in November.

THE COMMISSION ADJOURNED TO CLOSED SESSION at 12:27 p.m.

(COMMISSION MEETING RECONVENED AT 1:35 P.M.)

Chairman Randolph announced that the Commission had its closed-session meeting. No reportable action was taken out of that. She introduced Leah Yadon, as the person who would now be taking the minutes for this meeting as Kelly Nelson went home sick. The Chairman opened discussion for Item 15.

Item #15. Prenotice Discussion of Amendments to the "Public Generally" Exception

Bill Lenkeit of the Legal Division, together with Luisa Menchaca, General Counsel, discussed Item 15, which involves proposed amendments to the regulations concerning the "public generally" exception to the conflict-of-interest provisions of the Act. Mr. Lenkeit proceeded to advise the Commission as follows: The Act's basic conflict-of-interest rule prohibits public officials from participating in decisions in which they have a financial interest. A public official has a financial interest in a decision if the decision will have a reasonably foreseeable financial effect on certain economic interests held by the official, including real property, business interests, and sources of income, gifts, and the official's personal finances. However, the financial effect must be distinguishable from its effect on the public generally – in other words, if the financial effect of a government decision on a public official's economic interest is indistinguishable from the effects of its decision on the public generally, the public official will not be disqualified from participating in the decision. Regulations 18707–18707.9 provide the rules for applying the public generally exception. The general rule stated in regulation 18707.1 provides a two-part test for applying the rule. The decision must affect a significant segment of the population, and the segment must be affected in substantially the same manner as the public official. For real property economic interests, the significant segment is currently defined as 10 percent or more of all property owners or all homeowners in the jurisdiction where the district the official represents, or 5,000 property owners or homeowners in a jurisdiction. This project contains five (5) Decision Points addressing proposed amendments to the public generally exception. The first four concern changes to the general rule stated in regulation 18707.1, while the fifth proposes adding a new regulation – 18707.10 that would provide a special rule for applying the public generally exception to small jurisdictions.

Commissioner Downey noticed that on page 2 of the memo a reference was made to "18707.15" and asked if this was "just a typo." Mr. Lenkeit confirmed the error, stating it started out that way and then changed it to 10.

Mr. Lenkeit continued as follows: Of the four Decision Points offered in the proposed changes to the general rule, the first Decision Point would modify the terminology used in defining the significant segment for real property interests, by changing the word "homeowner" to "residential property owner" in order to take into consideration rental property. The remaining three Decision Points contained in regulation 18707.1 provides certain methods to be used in determining when the financial effects of a decision are substantially the same on a public official when measured against the identified significant segments. Decision Point 1 is the result of a request by Lisa Foster of San Diego County to address concerns of certain jurisdictions that contain a high percentage of rental properties. The Commission's current definition of

"homeowners" includes only those who own the home in which they live. Owners of property that is rented out are not included under the definition of "homeowner." However, because the financial effects of a decision impact residential property values irrespective of who may or may not be living on the property, there does not appear to be a sound reason for not including owners of rental property within the potential significant segment of homeowners affected. Decision Point 1 would delete the word "homeowners" and replace it with the words "residential property owners" so as to include all owners of residential property regardless of who actually resides in the property.

Chairman Randolph opened discussion to consider Decision Point 1, as it was a fairly stand-alone one. She noticed that under "3" Mr. Lenkeit writes "residential property means any property that contains a single family home or a multi-family structure" and asked Mr. Lenkeit if he had any recommendation one way or the other in picking between two and four units. Mr. Lenkeit stated he would recommend four units – include four-plexes as well as duplexes.

Chairman Randolph called for questions relating to changing "homeowners" to "residential property owners."

Commissioner Downey responded he thought it sounded like a good idea.

Mr. Lenkeit continued with Decision Point 2 as follows: The language in Decision Point 2 grew out of a suggestion at the Interested Persons' Meeting that more guidance was needed in order to determine what factors needed to be considered to determine if the financial effects of the decision were substantially the same for the public official and the significant segment of the public generally. These factors were taken, for the most part, from guidance provided in staff advice letters addressing that issue and generally include the same factors that a real property appraiser would examine to determine the fair market value of the property. Mr. Lenkeit pointed out that the first sentence in Decision Point 2 reiterates longstanding staff advice that financial effects are measured in terms of overall dollars and not percentages. However, Decision Point 4 offers a different approach and should that approach be adopted, this sentence would need to be removed. While the remaining factors listed would still provide guidance in many cases, they would also be less important if Decision Point 4 is adopted.

Mr. Lenkeit explained that Decision Point 3 provides a formula for establishing a minimum, but non-exclusive, threshold for meeting substantially the same manner test and it's taken from staff advice provided in the *Berger* Advice Letter issued last year. Under this formula, if the financial effect of a governmental decision on a public official's property is within a range of two-percent of the overall value of that property from the financial effect on property contained with the significant segment, the financial effects would be considered to be in substantially the same manner. In considering whether to define "substantially the same manner" in the past, the Commission has decided that the determination is best made on a case-by-case basis. However, that method provides no guidance. While Decision Point 3 does not attempt to define "substantially the same manner" for all applications and, in fact, reiterates that the determination should be made on a case-by-case basis, it does provide a minimum threshold within which this determination can be made.

Mr. Lenkeit continued, saying that Decision Point 4 would change the longstanding advice that financial effects are determined by the overall dollar amount of the effect and apply a flat percentage approach. Under this approach, if the financial effect of the decision affected the significant segment by the same percentage, the financial effects would be deemed to be in substantially the same manner – irrespective of the overall dollar effect. For example, if the effect of a decision will be a ten-percent increase on all properties within the jurisdiction, the financial effects would be determined to be substantially the same, even though a property valued at $5 million would increase the value by $500,000, while a property valued at $250,000 would increase in value by only $25,000.

Chairman Randolph expressed that Decision Points 2 and 4 are to some extent opposite one another because one brings up proportionality in terms of percentage – Decision Point 4.

Mr. Lenkeit stated that if we had a percentage effect in Decision Point 4, this would make everything in Decision Point 2 obsolete. If we didn't have a percentage effect, these factors would still remain in consideration, so they are not mutually exclusive. Commissioner Downey offered that Mr. Lenkeit could just eliminate the introductory sentence, which specifies "financial" effects .

Chairman Randolph stated she thought she liked Decision Point 2. Decision Point 3, on the other hand, made her a little nervous just because it is not *intended* to be an exclusive test. It somewhat adds a layer of complexity which she considers to be the sort of thing which makes people nervous. She was not really sure that it really added a lot of help. She, however, was not unalterably opposed to it. As for Decision Point 4, she did not see any reason to change their longstanding interpretation about the overall dollar amount versus the percentage. She was interested to hear reasons why some may want to do that.

Commissioner Downey agreed with Chairman Randolph on Decision Point 2 – the 13 factors – because he listened to her tell him, as a former City Attorney, that checklists are okay. He commented that Decision Point 3, which he referred to as "the two-percent rule" from his marginal notes, could be viewed not as another level of complexity, but just an alternative for finding substantially the same manner. He mentioned that as he was reading the memo, he wondered why we did not use the same percentage of decrease in value as a measure of "substantially the same." It showed up at the end, but turns out we hadn't been doing that – we had been looking at the dollar amounts, as Mr. Lenkeit suggested, and he was not convinced that this was the wrong way to go. If everybody is ten percent, it's pretty similar in one sense; on the other hand, if the affected member of the council, planning commission, etc., owns the most expensive property – or the least expensive property – the number of dollars could be disparate. He guessed the Commission's past practice has been to look at the dollars, not at the similar percentage increases or decreases. He asked Mr. Lenkeit why that was.

Mr. Lenkeit did not know the answer to that question. However, his take on it was when relative financial effects (meaning "results") in the statutory language are discussed, the dollar amount is the results.

Chairman Randolph expressed she thought Commissioner Remy answered it himself earlier by saying if one is talking about percentage, the dollar amounts could be very different – resulting in very different overall impacts.

Mr. Lenkeit agreed, adding that that has been the logic used in advice letters when saying dollars are measured, because if just using percentages, it could have an extremely overall financial effect, depending on the value of the property that one starts off with. But, when discussing financial effects, which are the statutory language, he thinks it does mean the overall dollar amount.

Ms. Menchaca added that the concept of proportional effect across the board is in a couple of other specialized regulations. However, in those regulations, the segment is very similar, but there are factors that ensure that that segment is very narrow so that they are a lot like each other, both in percentage and dollars. In this rule of general application there would not be that kind of situation unless it was reexamined how to further create segments that would be similar to each other.

Commissioner Downey could see situations that occur where the official owns a large plot of land – there may be enough people around to reach the ten-percent rule, but if one owns a disproportionate portion of the affected properties, he didn't really want to say that is "substantially the same manner" – the dollars are too different. He, therefore, agreed with Commissioner Remy.

Commissioner Remy agreed mostly with Chairman Randolph. He personally did not like 3. He tries to look at local elected officials, and in going through the document, it was agonizingly difficult trying to figure out what all the properties were, their value, etc., he felt it was just too complicated and too much for a city attorney to do. He thought 2 made sense and 4 has some attractiveness, but would rather stay with the 2 list.

Chairman Randolph expressed that what bothered her most about 3 was that if one had all this data, it would be a great way to go through it, as they had in the *Berger* letter. They went through the effort and collected it and, basically, they were saying to us that now that they had the data, "what do we do?" She thought when you put that in a regulation, it seems as though the Commission wants you to go get that data. The Commission is not saying that one has to go through all these hoops, because sometimes it will be possible – other times not. Sometimes conclusions will have to be made on a lot less information than as in the *Berger* letter.

Ms. Menchaca mentioned that one thing about the *Berger* letter was that they actually had written before, but then went on and spent thousands of dollars to have these specialized reports there that ultimately did not work very well in the application of the public generally exception. What staff was looking for here was that if jurisdictions are going to be spending thousands of dollars on appraisal reports, they will come back with something that is in the ballpark. It is really a loss of resources, and jurisdictions become frustrated by it because they did not go about using a methodology that would work well with the Political Reform Act.

Mr. Lenkeit added that it would be helpful in some circumstances if they are able to determine whether a redevelopment project will affect a certain four or five-block area by raising property values by a certain percentage. If one looks at that four or five-block area, and it is in a homogenous neighborhood and all the houses are fairly similar, this would help them to get there.

After all this, Chairman Randolph was still not convinced.

Ms. Menchaca stated that one downside to Option 3, too, is that it deals with real property interest issues, based on the average property value of homes. This would probably have to come back and be revised as that may change.

Commissioner Huguenin was shocked when he read 2 because it is so long and there are too many objective points, meaning a subjective decision. It does not say that they are all weighted equally, but they could be. One could make a spreadsheet and compute each one of them, comparing each other parcel property within whatever the area is that has an effect. He stated it just boggles the mind what one could do with all these things. He asked Mr. Lenkeit what his vision was about how this test would be applied in any particular situation involving the Mayor of San Luis Obispo, for example.

Mr. Lenkeit responded that the Mayor would have to look at this the same way any other public official would, and he would have to go through each of the steps to see whether it applied to his particular situation. Mr. Lenkeit was not familiar with all the facts dealing with the Mayor in that case, but believed most of these would come into consideration somewhere along the line.

Commissioner Huguenin guessed that they would because they are written that way. However, his concern was that there are just so many criteria making it difficult to yield a decision that would be consistent over a series of instances – from one instance to the next because there are so many ways one can weight and adjust imbalance. The thing about 3 is that it is just the opposite. It purports to be reasonably objective, it is a formula reasonably easy to apply once the input is squared away. He would not stand opposed to it if this is what the Commission needs to do. Admitting he is new to the Commission (1-1/2 years) and very new to assessing these impacts on the decision making of local officials that it is conceptually easy to understand, but when one gets right down to applying a hard test, it may take all of these things, which are in the nature of the things that an appraiser of real property might look at when trying to determine the value of the property or comparing the value of properties. He was just shocked by it.

Mr. Lenkeit agreed that it is long, but stated that one of the things that make it helpful is that these are all factors that have been given in advice letters, so now, instead of searching for every advice letter on what has to be considered in making this determination, it is all right there in one place.

Chairman Randolph agreed with Mr. Lenkeit that having it all centered in one place is helpful and giving the following as an example of what one would do: "You'd sit down with your official and say 'Okay, how big is your land? Is it the same as everybody else in your

subdivision? Are you near any arterials? Is this going to affect the traffic as you're coming home from work? Are you going to be able to see this project from where you live?"

Commissioner Downey further pointed out that if we were just stuck with subdivision 2, without the embellishments of Decision Point 2, you do exactly what the Chair has just said – you sit down with your official and ask these same questions. They're just not in the regulation – or most of them, anyway. Some will not apply. He thought it was handy to have a "checklist." He commented that his first reaction when initially reading this regulation was the same as that of Commissioner Huguenin's – "No, we're not going to do this – this goes on way too long – how are you going to balance these things." "The fact is," he stated, "they're going to be there anyway. This is a not limited list of things you can look at. It doesn't tell you how to balance one against the other, but you'd have the same problem of how do you balance if you didn't have the list and you drew it up yourself – which is what you should do if you're a City Attorney." He was persuaded that "it's okay."

Commissioner Remy asked if there was any comment from the City Attorney's Division of the League of California Cities?

Mr. Lenkeit responded that this grew out of suggestions that came out of the Interested Persons' Meeting – which they would rather have a regulation that would set out everything that they need to consider.

Commissioner Remy asked if Michael Martello was there and Mr. Lenkeit responded he thought Martello was on the phone.

What Ms. Menchaca recalled from the Interested Persons' Meeting was not that Mr. Martello was enthusiastic about the idea, but certainly understood the fact that we, in our analysis, pretty much use similar factors, which would at least be something to explore. Commissioner Downey verified that this was relating to "prenotice" and Mr. Lenkeit confirmed. Commissioner Downey suggested we ought to keep it in since it is at prenotice as it can be balked at later if so desired.

Chairman Randolph did a quick overview stating we have Decision Point 1, four units, Decision Point 2 (which will be left in for now), Decision Point 3. Commissioner Remy was in favor of deleting Decision Point 3. Chairman Randolph then called for public comment.

Scott Hallabrin stated on the issue of whether or not to keep Decision Point 3, the only thing troubling him was if all that is left is Decision Point 2, it seems the standard will become not substantially the same manner, but exactly the same manner, because, as it states in the first sentence, you look at the overall dollar amount and you'll give any criteria for leeway if it's different – if the dollar amount and dollar effect is different. It seemed to Mr. Hallabrin that while in an enforcement case it may not present that big of a problem because they will probably not bring a case unless it deviates "a whole lot" from the rest of the public, but for writing advice letters, the staff will probably start bending and saying, "Well, we'll give you a little leeway here and you're going to get this in-exact standard that's going to come out in the advice letters."

Mr. Lenkeit responded that one of the changes made last time when this regulation was amended was to say that substantially the same manner doesn't mean exactly the same manner.

Chairman Randolph quoted from the regulation stating that the financial effect need not be identical for the official's economic interest to be considered financially effected in substantially the same manner. As far as Decision Point 3, she *generally* says "out." Commissioner Huguenin did kind of like it – however, it was the objective as opposed to the sort of subjective in his view of Decision Point 2, where there are so many criteria that you don't know which one you're using, perhaps. He could live without it. Chairman Randolph's response was that "it always ends up being subjective – it's pretty hard to do this fully objectively unless you have a lot of similar properties and a lot of data." Mr. Lenkeit agreed.

Commissioner Remy stated that for most local officials, he thought this was being made far too complex and difficult for most of the small towns.

Commissioner Huguenin deferred to Commissioner Remy on the difficulties faced by local officials. Mr. Lenkeit clarified that this particular discussion was on Decision Point 3. Chairman Randolph confirmed that Decision Point 3 would not be brought back.

Moving on to Decision Point 4, Chairman Randolph stated that it appeared that it had been decided that sticking with the existing rule as articulated at the beginning of Decision Point 2 probably made sense.

Mr. Lenkeit continued with Decision Point 5 as follows: Decision Point 5 would revive the public generally rule for small jurisdictions by adding regulation 18707.10. This Decision Point resulted from continuing concerns expressed by representatives in small jurisdictions at the Interested Persons' Meeting that the thresholds in the general rule were too difficult to meet in many small jurisdictions and that a special rule was again needed for those small jurisdictions. The language presented in this Decision Point is preliminary and staff seeks direction from the Commission to consider in the need for a public general exception for small jurisdictions and what element should be contained in that exception.

Commissioner Downey asked if this had not just been done a couple of years ago and Chairman Randolph confirmed it had been done in 2003. She furthered with the pros and cons as follows: Con: "Why should smaller jurisdictions have any different rule. The conflict issues are the same. If you add a 300 foot boundary – which is what we used to have – that sort of creates confusion because you have a 500-foot rule for some jurisdictions, a 300-foot rule for other jurisdictions. If you're an official in a small jurisdiction and you are in that 300 to 500-foot rule, why should you be able to participate any more than someone in a big jurisdiction between the 300 and 500-foot range." The Pro argument would be that people in small jurisdictions start getting knocked out of decision making, your 500-foot radius has a bigger impact on a small jurisdiction, and residents don't have representation – so, we should give them a break. If we have this fairly narrowly defined exception, this will mitigate the impact of drawing the big 500-foot radius in a small jurisdiction. Mr. Lenkeit agreed with her comments.

Commissioner Remy noted that in order to have this effect, all the following conditions would have to exist: "Of 20 other properties under separate ownership within a 500-foot radius of the boundaries of the property ... ." He stated most small towns would make decisions, suddenly discovering that the test of 20 other properties had not been met. He did not have a problem with factors 1 through 4, but did not know about factors 5 and 6. He felt many government officials would have trouble trying to figure out how they would or would not comply with those two sections – and they would have to comply with all of them to have "public generally." He seems to think there should be something much simpler than what 5 and 6 say.

Mr. Lenkeit asked if Commissioner Remy was talking about lot size and the 20 other properties. Commissioner Remy responding that the lot size was tough – 20 other properties, he thought, was even tougher. Chairman Randolph was not sure about that.

Mr. Lenkeit asked why the lot size would be tough. Commissioner Remy responded that if someone had calculated the lot size for all the lots in the jurisdiction, he supposed it could be applied. Chairman Randolph thought 5 would be harder than 6 because a metro-scan could be run of all the APN's in a certain radius – which she thought could also be done with number 5. One would sit there with his/her assessor's map, draw the circle, and punch in those APN's. Mr. Lenkeit agreed, adding that the 125 percent would be the hardest part of that one.

Chairman Randolph was surprised that the Commission had not received much input, except at the IP Meeting. Her sense was that she would like to move this forward to the adoption phase to ensure at least a little input is obtained. Commissioner Downey agreed stating that that was exactly what he had been thinking. At this point, he said he would vote it down. He stated that perhaps the Commission was missing something, but the regulated community was not present to express why they like it. Chairman Randolph agreed they should be given another chance to bring their concerns directly to the Commission and those can be included with the adoption. Mr. Lenkeit asked if it was correct to then leave the same six options – 1 through 6 – with no changes. Chairman Randolph agreed, adding that it can always be changed later if the Commission needs to.

Commissioner Remy asked the City Attorney's Division to respond one way or the other. They are the ones that will advise their elected officials about these rules. Mr. Lenkeit responded he felt that they like it and that was the reason the Commission is not hearing anything: "This is what they asked for, this is what they got, this is what it originally was – I'm sure they're pleased."

Commissioner Huguenin added he was certain if Ms. Foster from Solano Beach and other communities in San Diego County were upset about this, staff would have gotten a letter. Chairman Randolph recommended that Mr. Lenkeit contact the League relating to point 10, particularly, so that the Commission can know if they do or do not feel strongly about it.

Item #16. Adoption of Proposed Amendments to Regulation 18754 –Statements of Economic Interests for Members of Boards or Commissions of Newly Created Agencies.

Relating to Item 16, Chairman Randolph stated there were no changes from the previous version, except for one minor, non-substantive change. No need for a staff report.

Commissioner Downey moved to approve this item. The motion was seconded by Commissioner Remy. Commissioners Downey, Huguenin, Remy, and Chairman Randolph supported the motion, which carried with a 5-0 vote.

Chairman Randolph thanked Andreas Rockas for his excellent staff report.

Item #17. Work Plan Revisions.

Chairman Randolph commented this item was pretty straight forward and asked Ms. Menchaca if there were any changes from the written memo. Ms. Menchaca responded she had none at this point. Chairman Randolph asked if anyone had any questions about them.

Commissioner Remy responded he did not have any problem with the report. He proceeded to ask Mark Krausse about his negotiations with the "stem cell" people relating to the conflict-of-interest provisions.

Chairman Randolph responded that the issue was perhaps some difference of interpretation about how the working group would eventually be required to file Statement of Economic Interests. If an advisory body does not make decisions over the course of time and they are not just rubberstamping decisions, then they don't have to file. However, if it gets to the point where they are just rubberstamping decisions, then they may have to file. Basically, it was determined that the issue is premature, because at this point no one knows what kind of decision making processes these advisory bodies will be doing. It was indicated in the review of the conflict-of-interest code that the Commission keep an eye on that issue and, if it came up, the Commission would have to revisit it.

Mr. Krausse confirmed that Chairman Randolph had accurately summarized the issue and added that "we need conduct to go on. We need to see how they perform."

Ms. Menchaca noted that the CPI adjustment to the gift and contribution limits will be up in November. Chairman Randolph asked if this was the every two-year revisions and Ms. Menchaca confirmed this.

Chairman Randolph asked if there were any questions on the work plan and there were none. She asked if there were any public comments on the work plan and, again, there were none.

Item #18. Streamlined Enforcement Programs.

Chairman Randolph opened up discussion for this item.

Acting Enforcement Division Chief William L. Williams, Jr. , related that the streamlined programs have become an integral part of the enforcement mechanisms. He acknowledged the hard work performed by Political Reform Consultant MaryAnn Kvasager, as evidenced in this month's agenda by the number of streamlined cases on that agenda. He stated that, contingent upon the Governor's signing the raising of the threshold for major donors to $30,000, they are proposing some changes to the major donor program which should make it more commensurate with the larger amounts undisclosed that will be involved in those types of cases. He referred the Commission to the current major donor matrix located on page 2 of the memorandum, stating that even without the change in the threshold of up to $30,000, there has been increasing "anecdotal" pressure – because he is the one who reviews most of the major donor steps – to take in higher amounts in the cases – up to $200,000. Mr. Williams added that the current penalty structure is starting to become problematic in terms of basically giving them a commensurate penalty for the amount undisclosed. With the raising of the threshold amount to $30,000, they are expecting that the pool will become even larger. He stated they are proposing to raise the base penalty under the program to $1,000 from $400, in light of the higher amounts of nondisclosure that will be addressed under the program. The major donor threshold, itself, is being raised three times. They are proposing increasing the base penalty by only 2-1/2 times. The new proposed penalty of $1,000 is also proportionately the same percentage of the current maximum $5,000 penalty as the $400 penalty was to the former $2,000 maximum penalty. The second tier for non-responders would increase to $2,000 per count, which bears the same proportional relationship to the current maximum penalty as the $800 penalty to the $2,000 maximum penalty. They are proposing to move the threshold for enhancement based on the amount undisclosed to $100,000 – it was previously $50,000 – but they will increase the enhancement 2 percent of the amount undisclosed. Per account penalties would still be capped by $5,000. They believe the program will continue to be attractive because there will continue to be a waiver of late filing fees, which, for example, if one doesn't file for a year and it is $10.00 per day, that can be a substantial amount of money in this context. They are increasing the base scope of the program to $150,000. This is reflective of the pressures to use the program for larger cases and he asked the Commission that they be allowed to include cases up to $200,000 on a discretionary basis, using the same factors that have been previously used under the program.

Commissioner Downey asked if "per base" is only 50.

Mr. Williams responded "after 150" – the current basis is 50, but there have been pressures to where they have been looking at cases at over $100,000.

Chairman Randolph asked if the 50 was not an absolute bar to the program, but just what qualifies them for enhancements. Mr. Williams confirmed that statement, adding that when the program initially started the ad hoc handling of it was that 50 to 100 was discretionary, but over 100 became more discretionary. They are seeing higher amounts of money. The program is so effective and efficient that there has been a pressure to include larger amounts under it because

they can get processed quickly and they are willing to process higher amounts, but would like a penalty structure that is reflective of more serious nondisclosure. Those were the proposals relative to this program.

Commissioner Remy asked what maximum under the enhancement was. Mr. Williams responded that if it was $150,000, it would be 2 percent of $150,000, which is $3,000. $3,000 would be added if they were a first-tier responder, meaning they would be paying $4,000 for $150,000 in nondisclosure. Ultimately, it is capped by the $5,000 maximum fine in any case, so, once up to the $200,000, you're just looking at a $5,000 maximum fine.

Commissioner Huguenin asked if the proposal is to eliminate the current tier 3. Mr. Williams responded by saying that the current tier 3 was not really a tier. It was for cases that fell out of the streamline program. It was not being used. Therefore, it was eliminated and they can address fallout cases just as they do any other cases taken in administratively. "Fallout cases" are cases that involve the same limited fact pattern, but are too serious for them to be handled under the program, or people have opted out of the program. Those cases are handled as normal administrative cases, although they are also handled currently by Political Reform Consultants with review by the Chief of Enforcement.

Chairman Randolph invited Mr. Williams to move on to the other programs.

Mr. Williams advised that relating to the LCR's, they are proposing only to remove the $3,500 cap and nothing more. They are anticipating that like the major donor cases that they will be seeing larger amounts because many of their LCR cases come from the major donor programs, and since the major donor threshold is now going to be raised to $30,000, they are anticipating that the LCR's will be more significant as well. He thinks it gives them greater flexibility, with the program remaining attractive to the regulated community as an option to being sued in a private civil context for the total amount not disclosed. It would be capped in by the $5,000 maximum.

Mr. Williams continued with the SEI program, advising that they had proposed modest increases in the penalty structure and referred the Commission to the last page of the memorandum. He stated this was to reflect just how many contacts they have had with people at the point where they are actually in the program. At that point, those people have had a lot of contacts from others asking them to file. We would like to up the ante a bit so that they would be encouraged to take advantage of the lower tiers and not require us to take them up to the higher tiers to get them to file in remedy of the violation.

Chairman Randolph asked Mr. Williams if by using the term "max three violations" he meant that if somebody was a tier-one person responding after the initial contact, but had not filed up to three reports, then we would say, "Okay, you file your three reports and we're going to fine you $600." Mr. Williams responded as follows: "Max three violations" means there are three non-filings involved, so that we could still keep them in – we have multiple violations. I presume they would – I don't have Wayne here who is running the program, but the way that we would do it is that if they're in the first tier for – let us just say the – or sometimes we get three violations in terms of that's the first time we hear about it. If we had violation on top of other

violations that we discovered later, I presume they would be moving through the tiers the same way because the Political Reform Consultant handling the case would be making the same contacts for them, so they'd have three counts involving three different fines for the nondisclosure.

Chairman Randolph asked if they currently did up to three, and Mr. Williams' response was "yes, that's not a change."

Chairman Randolph asked if there were any questions on that. Commissioner Remy asked "who makes the first offer." He has noticed that on the agency it states, "on this violation it is a mid-range violation or it is a lower violation." I understand that, but who makes the first offer to the person and then how is that offer vetted within our organization to know that it should be high, low, or medium?

Mr. Williams responded that the Political Reform Consultants under the streamlined programs are all set out fairly clearly in terms of what the expectation is. For instance, in the major donor program, the sheet in the file will say "second contact," meaning that that person is currently looking at an $800 minimum fine for the major donor. It is similar in the SEI program in that it is laid out – initial telephone contact, statement filed, and stipulation returned in 15 days. Those are fairly objective standards. Everything is objective and all streamlined stipulations are reviewed by an attorney before they go out to ensure they are in conformance with the mathematics, basically, of the different tiers. So, the tiers are pretty objective under all these plans. Generally, in terms of stipulations that are outside of the streamlined programs that Enforcement embarks upon, there is a request for settlement authority made to the Chief of the Division by the attorney who is handling the case. The attorney may or may not have already made contact at that point with the other side, depending upon how the investigation has gone. Then, at the very least, a stipulation with an exhibit attached to it will go out to the other side as a proposed settlement of the case and will give the other side an opportunity to respond, to sign off on the stipulation, to send us the penalty amount, and, at other times, that will start negotiations also if they want to negotiate either a lower penalty or some sort of variation in terms of the nature of the case against them.

Commissioner Remy reiterated that the actual negotiation starts at lower level staff and asked if it ultimately goes to the Division Chief for a final sign-off. Mr. Williams responded that the sign-off does go to the Division Chief.

Chairman Randolph asked if the RSA's include a range for settlement. Mr. Williams responded by saying that their RSA's include a range for settlement.

Commissioner Remy continued asking whether there was any review at all with the Executive Director on any of these matters. Mr. Williams explained that the Executive Director does not get involved in negotiations but he signs off on the stipulations before they appear on the agenda.

Chairman Randolph called for other questions.

Commissioner Huguenin welcomes Mr. Williams to the "Chief" position.

Mr. Williams asked Chairman Randolph to make it clear that these recommendations are contingent upon the Governor signing the major donor changes. Chairman Randolph confirmed this contingency.

Chairman Randolph called for a motion to approve the changes in the program as proposed by the Enforcement Division, recognizing, of course, that they have a fair amount of discretion in implementing the program and recognizing that the change to the major donor funds are conditioned on the increase to $30,000.

Commissioner Huguenin moved to approve this item. The motion was seconded by Commissioner Downey. Commissioners Downey, Huguenin, Remy, and Chairman Randolph supported the motion, which carried with a 4-0 vote.

Item #19. Informational Discussion: The Regulation of Independent Expenditures.

Chairman Randolph opened discussion for Item 19.

Mr. Woodlock explained the memorandum provided to the Commission is fairly broad. It explains independent expenditures and where they sit in the context of campaign expenditures, generally, including the type of problems that different groups of people see with them. He advised that the Legal Division had not reached any conclusions, but had made this information available to the Commission so that they could note it, ask questions, and let the Legal Division know what the Commission's interest is in this area.

Commissioner Downey stated that he took this memo as being informative and educational tool that could be useful to the Commission in any number of future considerations they may have. He did not have any questions, but did find a typo – middle of page 3, second sentence, there should be a "not." He stated that, other than that typo, he found it to be a very interesting essay and thanks Mr. Woodlock for giving it to the Commission.

Commissioner Remy agreed, saying he appreciated the job Mr. Woodlock did in getting some background information. He found it perplexing that independent expenditures have to be separate from any individual candidate and, as pointed out in Mr. Woodlock's memo, it is difficult to require proof of how one does this and yet it seems that it is something that has a growing interest and concern in the public press and many other areas and Commissioner Remy's frustration was how to get a handle on it if it is so difficult to prove and so difficult to see and yet everyone is saying "this is an area that is growing in importance in terms of a way to perhaps get around the Political Reform Act." He asked, "Do we just do nothing until we reach a crisis?"

Mr. Woodlock responded by stating that that is for the Commission to decide. He agreed that people view the political process cynically at the present time and a lot of cynicism surrounds independent expenditures when there may be suspicions that they really are surreptitiously coordinated with a candidate, but agrees it is very hard to prove that kind of coordination and, in

fact, that kind of crude coordination is often not necessary. A candidate's views on how he would like to run the campaign and where he would like to see some money spent may be well known and the candidate's supporters may simply follow up on that knowledge and do exactly what the candidate wants, and there really is no coordination between them – these are just acts by knowledgeable "insider." The layers are very perplexing and very hard to penetrate and very seldom can one show that there was a determined, coordinated effort to fund a candidate campaign through a third-party proxy.

Commissioner Remy asked what the downside would be if the candidate did not want to do everything he or she could through independent expenditures, particularly since their opposition would probably do it. Chairman Randolph responded that the candidate could not do it – they would have to rely on someone else to do it, which means they lose control of the message.

Mr. Woodlock agreed, adding that candidates are jealous of control – they like to time and phrase the message precisely. In dealing with this in prior litigation, Mr. Woodlock stated that candidates have indicated a preference for suppressing independent campaigns and seizing the stage themselves in order to control what is said. Mr. Woodlock added, "On the other hand, sometimes it is convenient, if you want to go negative in a way that might reflect badly on the candidate, to have a proxy do that, so you can disavow it. The permutations and combinations here are almost endless." Mr. Woodlock further stated that the thing staff tried to point out was that the definition of "independent expenditure" in California is currently very narrow, being limited to express advocacy. If the Commission were interested in attempting to move toward a more federal kind of regulation for electioneering communications, that might be possible. It would not be possible to do it this year, but it is something the Commission could think about.

Chairman Randolph asked if anyone had as an independent group, analyzed the 85310 reports, such as looking at the effect, if any, how many filings there were, what kind of activity was going on out there? She added that currently that is "our only sort of issue advocacy regulation."

Mr. Woodlock was not aware of much activity there at all – at least, not a lot of activity out there that would "catch our attention as interested observers."

Carla Wardlow stated that the last time she visited the Secretary of State's web site, over a month ago, there was not much on there.

Ms. Menchaca added that even during the last major election there were not any that were filed, so, the activity has not been there yet. She stated that perhaps this November they would see more activity.

Chairman Randolph asked if there were any other questions or if anyone had anything further in this matter. There were no further questions or comments.

Item #20. Executive Director's Report.

Chairman Randolph called for the Executive Director's report.

Mr. Krausse did not have anything to add on the ED's report.

Chairman Randolph called for any questions about the ED report. There were none.

Item #21. Litigation Report.

Chairman Randolph called for the litigation report.

Ms. Menchaca stated that the *ProLife* matter was not calendared in October. The *Agua Caliente* matter will be heard before the California Supreme Court on October 4 in Santa Barbara.

Item #22. Legislation Report.

Chairman Randolph called for the legislation report.

Mr. Krausse updated the Commission on AB 2112, the Commission-sponsored bill limiting the number of civil demands that can be brought by a single litigant. This bill is on its way to the Governor – having been passed by both houses – as has SB 1693, the bill to raise the threshold, mentioned earlier, for major donor reports to $30,000. In both instances, it is not a sure thing whether one or both of those bills will get signed.

Mr. Krausse added that he returned from an independent expenditure discussion in the Assembly Elections Committee that morning, where he had used Mr. Woodlock's memo. He stated that the committee is just as perplexed and concerned about the increase as the Commission. A statistic brought up was that in the first year under Proposition 34 in legislative races, there was approximately one-half million dollars in independent expenditures; this year, in the primary alone, there was $16 million in independent expenditures. Mr. Krausse stated that by just looking on the Secretary of State's web site, one wonders if everyone who should be disclosing issue advocacy expenditures under Section 85310 is disclosing, because there is not a great deal of activity being reported. Some who are disclosing do not seem to understand what is required because they are reporting amounts below the $5,000 source amount, for example. Mr. Krausse is not clear whether all activity is showing up on that site, but states that there is clearly a lot of activity in independent expenditures. Mr. Krausse stated that questions from Legislators were along the lines of whether they could eliminate contribution limits and, therefore, not have the "tire bulge" in the independent expenditure area, or is there some regulation of independent expenditures "that they can do to try to dampen down the amount of it." There was no answer – it is rhetorical.

Chairman Randolph asked for question or comments. There were none.

Chairman Randolph advised that the October meeting will be on October 24, after the *Agua Caliente* hearing – the day before the meeting was originally scheduled; the November meeting will be November 14; and, the December meeting will be December 12.

The meeting adjourned.

Dated: November 27, 2006

Respectfully submitted,

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Elaine Hufnagle
Legal Assistant

_____
Leah Yadon
Commission Assistant

Approved by:

_____
Liane Randolph
Chairman